

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1235 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
RANCHHODBHAI V DESAI

Versus

BANSIDHAR AMRITLAL PARIKH& ORS

-----  
Appearance:

MR PRASHANT G DESAI for Petitioner

MR SI NANAVATI for Respondent No. 1

-----  
CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 19/11/97

ORAL JUDGEMENT

1. This revision application, arising out of execution proceedings, challenges the order dated August 29, 1992, passed by the 2nd Joint Civil Judge (S.D.), at Mirzapur. The learned Judge, by the impugned order, inter alia, held that respondent No.1 is entitled to get sale deed through the Court Commissioner on the basis of the consent terms arrived at between the parties in First

Appeal No.362 of 1976.

2. I have heard Mr. Nirupam Nanavati, learned Sr. Advocate appearing for the petitioners and Mr. Sudhir Nanavati, learned Sr. Advocate for respondents No.1 and 2. Mr. Nirupam Nanavati seeks permission to delete the names of respondents No.3 to 12 as party respondents. In the facts of the case, permission is granted. Accordingly, respondents No.3 to 12 stand deleted.

3. In order to appreciate the rival contentions raised by the learned Advocates appearing for the parties and for the purpose of disposal of this revision application, the brief facts giving rise to the present revision application are necessary to be mentioned. Vithal Mandir Trust is a trust duly registered under the provisions of the Bombay Public Trust Act, 1950. The trustees of the said trust had agreed to sell the land bearing survey Nos.37 and 38 situate at Thaltej, taluka Daskroi, district Ahmedabad to the second respondent herein. The trustees, however, did not execute the sale deed as per the agreement. The husband of the second respondent, therefore, instituted a suit, being Special Civil Suit No.16 of 1971, in the Court of Civil Judge (S.D.), at Narol, for specific performance of the agreement. The suit was dismissed on April 17, 1996. The plaintiff, i.e. the husband of the second respondent, preferred appeal against the dismissal of the said suit and it was registered as First Appeal No.362 of 1976. Unfortunately, the appellant, i.e. husband of the second respondent, of the said appeal expired during the pendency of the said appeal and the second respondent was brought on record. A compromise was arrived at between the parties in the said First Appeal between the trustees of the abovenamed trust and the second respondent. The copy of the said consent terms has been produced by the petitioner at page 20 of the compilation.

4. Respondents No.1 and 2 - judgment creditors filed Execution Application No.58 of 1990 in the Court of Civil Judge (S.D.), Ahmedabad (Rural), at Mirzapur, praying for reliefs, inter alia, that the judgment debtors be directed to execute the sale deed in respect of the suit land pursuant to the consent terms. The petitioners raised several objections in the said execution proceedings in respect of the applicability of the provisions of the Bombay Public Trust Act, 1950, Urban Land (Ceiling and Regulation) Act, 1976 and The Bombay Tenancy and Agricultural Lands Act, 1948, and contended that on account of non-compliance of several terms of the said consent terms, the execution petition was not

competent.

5. The learned Judge of the Executing Court, however, rejecting the contentions on behalf of the petitioners, directed that the sale deed in respect of the suit land be executed, as aforesaid. It is against the said order that the present revision application is preferred.

6. Mr. N.D. Nanavati, learned Sr. Advocate, submitted that the material terms of the consent terms were not complied with and the said terms being the basis for the purpose of execution of sale deed, the impugned order is without jurisdiction and it is passed without appreciation of the relevant documents on record. Mr. Nanavati for the petitioners referred to clauses 4, 7, 8, 11 and 15 of the consent terms, in this behalf.

7. Clause 4 of the consent terms, inter alia, provides that respondents No.1 to 7 shall obtain the "No Objection Certificate" as provided in the consent terms within a period of two years from the date of the decree and the said time shall be extended for a reasonable time at the option of the purchaser if inevitable. Admittedly, no such "No Objection" was obtained by or on behalf of respondents No.1 and 2, as provided in the consent terms. The learned Advocate for the petitioners submitted that Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948, inter alia, provides that transfer of agricultural land to non-agriculturists is barred. This specific contention was raised before the Executing Court and yet it has not been appreciated and dealt with in its proper perspective.

8. Similarly, the trust did not acquire N.O.C. under the provisions of the Urban Land Ceiling Act and eventually, the terms of the consent were not fulfilled. The finding recorded by the learned Judge of the Executing Court that the consent is to that effect, if the trust had not fulfilled its duty then the other side would have discharged their duty of obtaining the NOC or permission under the ULC Act and got the necessary permission under the Bombay Tenancy and Agricultural Lands Act. This is complete misreading of the consent terms. The executing Court cannot add or substitute the terms and conditions on the basis of which the sale was agreed to be executed between the parties.

9. Similarly, the learned Judge of the Executing Court has also not considered the fact that the trust has not obtained necessary permission of the Charity

Commissioner for disposing of the trust-property, namely, suit land, under the provisions of the Bombay Public Trust Act. Mr. Nirupam Nanavati has relied upon a decision of the Division Bench of this Court in the case of Huseinmiya Safimiya v. Habibsha Hasamsha Fakir, reported in 26(2) GLR 928. It has been held in the said decision that, it must be kept in view that as per section 36 of the Bombay Public Trusts Act, no immovable property of a public trust can be alienated in favour of anyone by a trustee without express permission of the Charity Commissioner and, if such alienation is made, it shall be invalid. In the instant case, the learned Judge of the Executing Court has not considered this aspect and as such the impugned order is illegal.

10. Mr. Nanavati also relied on the Full Bench judgment of this Court in the case of Shah Jitendra Nanlal v. Patel Lallubhai Ishverbhai, reported in 1984 (2) GLR 1001, wherein the question was whether decree for specific performance could be passed where exemption is obtained from the Government under Section 20(1)(b) of the Urban Land (Ceiling & Regulation) Act, 1976. The Full Bench, after considering the provisions of the Act, held that the conditional decree for specific performance subject to exemption being obtained under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 is permissible. In the instant case, the decree was unconditional one and it could not be ordered to be executed by the Executing Court. Mr. Nanavati submitted that even though the Court passed the consent decree there was statutory restraint on the trust and on that count also, the learned Judge could not have ordered to execute the same. I see force in this submission of Mr. Nanavati for the petitioners.

11. Clause 11 of the consent terms provides that one Hanspura Road Co-Operative Housing Society has filed Civil Suit No.210 of 1983 for declaration and injunction against the respondents in the Court of Civil Judge (S.D.), at Narol and has also preferred application for injunction. The application for injunction was dismissed by the Trial Court and the said proceedings were carried further to the Appellate Court. The said terms further provided that the respondents declared their physical possession of the land in question and they have never handed over the possession to the said Hanspura Road Co-Operative Society and their rights of Banakhat were null and void. However, it is contended by Mr. Nirupam Nanavati for the petitioners that the stay of the Competent Court in respect of the land in question was operative at the relevant time and, therefore, the

Executing Court could not have passed the impugned order. Mr. Sudhir Nanavati, learned Advocate for the respondents, contended that the stay was vacated. Be that as it may. The learned Judge of the Executing Court has not considered these aspects, which would amount to misreading of the documents on record.

12. In the above view of the matter, the impugned order is illegal and unsustainable and, therefore, it is required to be quashed and set aside.

13. In the result, this Civil Revision Application is allowed. Rule is made absolute.

...